



## State of Washington

### PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission

FROM: Philip E. Stutzman, Director of Compliance

DATE: November 30, 2004

SUBJECT: Report with Staff Recommendation  
John Ladenburg, Pierce County Executive, 2003 Ballot Proposition  
PDC Case No. 04-440

### LAW

RCW 42.17.130 states in part: "No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency and clientele lists of persons served by the office or agency..."

### FACTS & ANALYSIS

**Background** - On August 5, 2003, the Pierce County Council introduced a Pierce County Ordinance to place a proposed public safety and criminal justice sales tax increase measure on the ballot. On September 2, 2003, the Council approved the ordinance, placing Proposition 1 on the November 4, 2003 general election ballot. Proposition 1 proposed increasing the sales and

use tax in Pierce County by three tenths of one percent, to fund criminal justice activities. The proposed sales and use tax increase excluded purchases of food, medicine and automobiles.

On October 31, 2003, a complaint was filed with the Public Disclosure Commission alleging that officials of Pierce County used Pierce County facilities to support Proposition 1, a proposed public safety and criminal justice sales tax increase that was on the November 4, 2003 general election ballot. Two additional complaints alleging similar violations were received on November 3 and November 4, 2003. The complaints alleged that Pierce County officials produced and distributed two postcards that promoted passage of Proposition 1. One of the complaints also alleged that the postcards were targeted to registered voters.

**Summary** – Based on a review of the allegations, facts, and mitigating factors, PDC staff is recommending that the Commission find multiple apparent violations of RCW 42.17.130 by John Ladenburg, Pierce County Executive, and refer the matter to the Office of the Attorney General for appropriate action.

- Mr. Ladenburg authorized and approved the preparation and content of two mailers that were promotional, and were not a fair and objective presentation of the facts. The mailers were produced and mailed at a significant cost to Pierce County, \$55,060, not including staff time.
- The mailers were targeted to registered voters in Pierce County who had voted in two of the last four elections.
- A second mailer was sent just days before the election to reinforce the impact of the first mailer.

Following is a summary of the content and distribution of the mailers, and the mitigating factors considered by staff in coming to its conclusions and recommendations.

**Appropriation of funds to distribute information to the public** - The Pierce County Council appropriated \$60,000 to be used to distribute information to the public regarding the impacts of

Proposition 1 on Pierce County. Two large postcards were produced and distributed. John Ladenburg is the Pierce County Executive who approved the postcards and Ronald Klein is the Pierce County Director of Communications who wrote the postcards at Mr. Ladenburg's direction. Proposition 1 failed to pass.

Content of first postcard – The first postcard included in large type:

***Important Information About Your Taxes and Safety***

By placing a high emphasis on the safety of Pierce County residents, the postcard creates a sense of fear for what will happen if Proposition 1 does not pass. On the reverse side of the postcard, it states in large type, “*Why do Pierce County, Tacoma and other cities need more police officers, an improved court system and increased public safety?*” It then gave six answers, each with a check mark to emphasize its importance. The answers are as follows:

- ✓ Pierce County ranks 38<sup>th</sup> out of 39 counties in the number of officers per citizens
- ✓ We have the highest violent crime rate in the state
- ✓ The most felony convictions
- ✓ The most sex offenders
- ✓ The second most auto thefts
- ✓ The most meth-manufacturing labs on the West Coast

The postcard gives no details about how or against whom Pierce County measured its crime statistics. The mailer makes bold statements about several types of serious crime that evoke strong emotion in the reader. It includes a statement that Pierce County ranks 38<sup>th</sup> out of 39 counties in the number of officers per citizens, implying that law enforcement protection in Pierce County is deficient and that if more funding is not secured, the safety of Pierce County residents could be in grave jeopardy. By emphasizing violent and serious felony crimes, the postcard has a look and feel that evokes fear.

To answer the question, “What will Proposition 1 do?” four answers are given. Each answer starts with a word in bold type to emphasize the benefits of passing Proposition 1.

- ❖ **Increase** law enforcement and reduce response time by hiring more than 100 new county and city police officers
- ❖ **Provide** prompt justice and accountability for offenders by increasing the numbers of judges, prosecuting attorneys and public defenders
- ❖ **Assure** that offenders do not receive early release and the remaining areas of the new jail can be opened by hiring more corrections officers
- ❖ **Protect** victims and keep young people out of jail by supporting domestic violence and juvenile crime prevention programs

The four answers lead the reader to believe that by passing Proposition 1, many of Pierce County's crime problems will be solved. The postcard goes beyond stating the facts in a fair and objective manner and speculates on the impact of passing Proposition 1. For example, in addition to stating that 100 new county and city police officers will be hired, it speculates that *enforcement will increase and response time will be reduced*. Rather than simply stating that the number of judges, prosecuting attorneys and public defenders will be increased, it speculates that *this action will provide prompt justice and accountability for offenders*. In addition to stating that the remaining areas of the new jail would be opened and additional corrections officers hired, it speculates that *this action will assure that offenders do not receive early release*. Finally, rather than objectively stating that domestic violence and juvenile crime prevention programs will receive additional funding, or stating how much funding would be budgeted for specific programs, it speculates that *victims will be protected and young people will be kept out of jail*.

The postcard includes the amount of the increase in sales tax if Proposition 1 passes (3/10<sup>th</sup> of a percent) saying it would amount to 3 cents on a \$10 purchase, but fails to state what the total sales tax rate would be in unincorporated Pierce County (8.5%) or in Tacoma (9.1%) if Proposition 1 passes.

Under "What if Proposition 1 fails" the postcard includes a statement that if Proposition 1 fails, cities and counties will have the choice to do nothing, further reduce or eliminate other services to find funding, or resubmit the Proposition at a later date. When combined with the other

statements in the postcard, the options lead the reader to believe that if nothing is done, several types of serious crime may not be addressed.

By minimizing the impact of increasing the sales tax and maximizing the negative impact of unattended serious crime, the postcard is not a fair and objective presentation of the facts.

Content of second postcard – The second postcard includes in large type:

***More Important Information About Proposition 1***

The reverse side of the second postcard emphasizes in large type that Proposition 1 must be used for public safety purposes only. It then asks the question, “What will Proposition 1 do?” Each answer to this question starts with a word in bold type to emphasize the benefits of passing Proposition 1. The explanation of what Proposition 1 will do is as follows:

- ❖ **Hire** 100 more police officers in the cities and the county to improve law enforcement.
- ❖ **Fund** three new domestic violence centers to protect and assist victims and their children.
- ❖ **Save** criminal costs by funding juvenile crime prevention programs that keep children out of jail.
- ❖ **Protect** seniors from financial, physical and emotional abuse.
- ❖ **Hire** 48 corrections officers to prevent the early release of prisoners and open the remaining areas of the new jail.
- ❖ **Provide** prompt justice and accountability for offenders by increasing the number of judges, prosecuting attorneys and public defenders.

The explanation given in the second postcard of what Proposition 1 will do is similar to the explanation given in the first postcard. The second postcard also goes beyond stating the facts in a fair and objective manner and speculates on the impact of passing Proposition 1. For example, in addition to stating that 100 new county and city police officers will be hired, it speculates that *law enforcement will be improved*. It states that three domestic violence centers will be funded, a fact that could have been included in the first postcard. Rather than objectively stating that juvenile crime prevention programs will receive additional funding, or stating how much funding

would be budgeted for specific programs, it speculates that *criminal costs will be saved and the juvenile crime prevention programs will keep children out of jail.*

The statement that Proposition 1 would “**Protect** seniors from financial, physical and emotional abuse” is not an objective fact. It uses inflammatory language that attempts to generate an emotional appeal for support. The second postcard states that 48 corrections officers would be hired if Proposition 1 passes, a fact that could have been stated in the first postcard. In addition, the postcard restates that the remaining areas of the new jail would be opened and speculates that *this action will prevent the early release of prisoners.* The second postcard goes beyond simply stating that the number of judges, prosecuting attorneys and public defenders will be increased, and again speculates that *this action will provide prompt justice and accountability for offenders.*

The second postcard also includes the increase in sales tax if Proposition 1 passes (three-tenths of a percent) by saying it would amount to 3 cents on a \$10 purchase, but again fails to state what the total sales tax rate would be in unincorporated Pierce County (8.5%) or in Tacoma (9.1%) if Proposition 1 passes. It then answers the question, “Why is Proposition 1 on the ballot?” by giving the following six reasons:

- ❖ We have the highest violent crime rate in the state.
- ❖ The most felony convictions.
- ❖ The most meth-manufacturing labs.
- ❖ The most sex offenders.
- ❖ The most auto thefts.
- ❖ Pierce County ranks 38<sup>th</sup> out of 39 counties in the number of officers per citizens.

Like the first postcard, the second postcard gives no details about how or against whom Pierce County measured its crime statistics. Its main purpose was to reinforce the message of the first postcard, that serious crime, including violent crime, is out of control in Pierce County, and the way to fix it is to either provide the funding called for in Proposition 1 or eliminate existing county services to provide the necessary funding. No details are given of what programs would be reduced to provide the needed funding if Proposition 1 fails.

By emphasizing violent and serious felony crimes, and minimizing the sales tax increase, the postcard is not balanced nor is it a fair and objective presentation of the facts.

Distribution of postcards – John Ladenburg, Pierce County Executive, approved spending \$55,060 to prepare and distribute the two mailings regarding Proposition 1. The first postcard was mailed on October 16 and 17, 2003, approximately two weeks before the election. It was targeted to approximately 75,000 households with a voter who had voted in two of the last four elections. A second postcard was mailed October 29 and 30, 2003, four to five days before the November 4<sup>th</sup> election, targeted to the same audience. The second mailer was not materially different from the first mailer and appears to have been sent to reinforce the message in the first mailer.

Mr. Ladenburg stated that the mailings were sent to registered voters because funds were not available to send the postcards to all residents of Pierce County, and because he believed that likely voters were the residents most in need of receiving the information. Pierce County officials had a right and responsibility to make a fair and objective presentation of the facts available to all residents of Pierce County. County officials could have chosen a less expensive method for distributing information about the measure to facilitate informing a larger audience. Staff believes that targeting registered voters was an attempt to support passage of Proposition 1.

Request for Advice by Pierce County - Pierce County staff contacted PDC staff prior to finalizing the first mailing, and asked PDC staff for review and comment. PDC staff informed Pierce County staff that they were unable to review the draft document for apparent compliance with RCW 42.17.130 because an injunction had been issued by a King County Superior Court Judge. During this time, no fact sheets were reviewed.

Mr. Ladenburg contends that had PDC staff reviewed the first mailer, the County would have followed staff's advice. While staff did not provide Pierce County with review and comment on the first mailing, staff believes that Mr. Ladenburg was familiar with RCW 42.17.130, and could have reviewed advice given by PDC staff to Pierce County officials in the past and applied those principles to the 2003 mailings.

Past Advice from Public Disclosure Commission - On March 4, 1996, PDC staff sent a memo to Pierce County officials in response to a request to review a proposed fact sheet that Pierce County was planning to send to residents about a pending ballot proposition. One of the suggestions was to remove the word “important” from the sentence “*Please take time to learn about this important issue.*” In the final version of the fact sheet distributed by Pierce County officials in 1996, the word “important” was removed. Both postcards distributed by Pierce County officials in 2003 emphasized the word “Important” in large boldface type.

Also, in reviewing the 1996 fact sheet, PDC staff recommended that the word “voters” be replaced with the word “residents” or “citizens” to remove any implication that the fact sheet was intended to solicit votes. When the postcards were distributed in 2003, they were only sent to registered voters.

Finally, in reviewing the 1996 fact sheet, PDC staff recommended that *language such as “several hundred prisoners may need to be released” and “the county will remain unable to arrest, prosecute, and sentence all criminals, and many prisoners will continue to be released early”*, should be modified because they could be interpreted as inflammatory statements, matters of opinion, or an emotional appeal for support. In 1996, Pierce County made changes to reflect staff’s suggestions. The postcards sent in 2003 included language that was inflammatory, a matter of opinion, and an emotional appeal for support.

### **CONCLUSION AND RECOMMENDATION**

Based on the facts specified above, staff recommends that the Commission find apparent multiple violations of RCW 42.17.130 by John Ladenburg, Pierce County Executive, by:

- authorizing and approving the preparation and content of two mailers that promoted passage of Proposition 1, at a cost \$55,060, not including Pierce County staff time.
- authorizing and approving that the first mailer be targeted for distribution to registered voters in Pierce County who had voted in two of the last four elections.



- authorizing and approving that a second mailer, sent two weeks after the first mailer and four days before the election, also be targeted to registered voters to reinforce the message of the first mailer.

After reviewing penalties paid in similar cases, staff believes that the Commission's \$2,500 maximum penalty authority is inadequate to address these apparent violations. \$55,060 of Pierce County money, not counting staff time, was spent producing and distributing two mailers that included promotional language and were targeted to registered voters. Based on these findings, the Commission is urged to refer the matter to the Office of the Attorney General for appropriate action.